



OFFICE OF THE ATTORNEY GENERAL • STATE OF TEXAS  
JOHN CORNYN

April 13, 2001

Ms. Ingrid K. Hansen  
Managing Director  
General Land Office  
1700 North Congress Avenue  
Austin, Texas 78701-1495

OR2001-1483

Dear Ms. Hansen:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 145969.

The General Land Office (the "GLO") received a request for a specified appraisal. Among other arguments, you assert that the requested information is excepted from disclosure under section 552.105 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

You assert that the request is made by the city of Texas City, Texas (the "city"), a governmental entity.<sup>1</sup> You thus argue:

Whether a governmental entity may release information to another governmental entity is not a question under the Act. Open Records Decision No. 661 (1999). The Act is concerned with the required release of information to the *public*. *Id.* at 2; *see* Attorney General Opinions, H-683 (1975), H-242 (1974), M-713 (1970); ORD 655 (1997); Gov't Code §§ 552.001, .021, .221(a) ("the people," "the public," and "any person"). As

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<sup>1</sup>The request was made by an attorney who, via e-mail, states: "At the request of Mayor Carlos Garza of the City of Texas City, Texas request is made that the State provide the City with a copy of [the specified appraisal]."

between governmental bodies, the release of information is a matter of policy. ORD 661 at 2. Accordingly, the GLO is not required by the [Act] to release the requested documents to the City.

You appear to imply, by the above-quoted argument, that the Act is not implicated by the present request because, you assert, the request is made by a city. Assuming, for the sake of argument, that the present request is a request by the city, this office has nevertheless long held that any written communication that reasonably can be judged to be a request for public information is a request for information under the Act. See Open Records Decision No. 497 at 3 (1988), 44 at 2 (1974). This is not a situation in which a *member* of a governmental body, in his or her official capacity, is requesting information maintained by *that governmental body*, in which case this office has held that the Act is not implicated. See, e.g., Attorney General Opinion No. JM-119 at 2 (1983) (written request by trustee of community college district, acting in his official capacity, for information maintained by community college district not a request under the Act). We thus conclude the present request is a request under the Act.

The authority that you cite in the above-quoted argument pertains to the doctrine of intergovernmental transfer. It is the well-settled public policy of this state that state agencies should cooperate in the interest of efficiency and economy in the administration of their statutory duties. Thus, a state agency's transfer of information to another state agency does not generally constitute a release of the information to the public for purposes of section 552.007 of the Act, nor does such a transfer necessarily constitute an impermissible release of confidential information. See, e.g., Attorney General Opinions H-917 at 1 (1976), H-242 at 4 (1974); see also Gov't Code §§ 552.007, .352. In other words, the intergovernmental transfer doctrine pertains to the permissible *transfer* of information from one governmental entity to another, where the information at issue is confidential or is otherwise excepted from required disclosure to the public. See, e.g., Attorney General Opinion H-242 at 4 (because state cannot assure federal agency will maintain state records with same eye towards confidentiality as state law would require of a state agency, intergovernmental transfer doctrine precludes federal agency access to information that is non-disclosable to the public). The intergovernmental transfer doctrine does not, however, provide a governmental body the authority to *withhold* from another governmental body information requested under the Act if the information at issue would be available to any member of the public. *Id.* (intergovernmental transfer doctrine does not preclude federal agency access to state information that is available to any member of the public). The Act requires the disclosure of "public information" requested under the Act, unless the information falls within one or more of the Act's exceptions to required public disclosure. Gov't Code §§ 552.002, .006, .021.<sup>2</sup> Thus, the GLO only has discretion, pursuant to the intergovernmental transfer doctrine, to decline to release the requested information to the city

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<sup>2</sup>You do not contend that the information at issue does not constitute "public information" under the Act. See Gov't Code § 552.002.

if the information is confidential or is otherwise excepted from required public disclosure under the Act. Accordingly, we next address whether the information at issue is confidential or is otherwise excepted from required public disclosure under the Act.

Section 552.022 of the Government Code states in pertinent part:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information *and not excepted from required disclosure under this chapter unless they are expressly confidential under other law*:

(1) *a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]*

Gov't Code § 552.022(a)(1) (emphasis added). The submitted information consists of an appraisal report prepared for the GLO by a consultant, which on its face is completed, and you do not argue that the report is not completed. We thus conclude that the submitted information is a "completed report" made for the GLO, a governmental body, and as such is subject to section 552.022(a)(1). Accordingly, the information "is not excepted from required disclosure under [the Act] unless [it is] expressly confidential under other law" or "as provided by Section 552.108" of the Act. You do not assert the applicability of section 552.108. Thus, the information is subject to release unless it is demonstrated to be "expressly confidential under other law." The sole exception you assert, section 552.105, is a discretionary exception in subchapter C of the Act and, as such, does not constitute "other law" that makes the information at issue "expressly confidential."<sup>3</sup> Section 552.022 of the Act thus requires that the report be made available to any member of the public. As the information has not been demonstrated to be confidential or otherwise excepted from disclosure, the intergovernmental transfer doctrine does not permit the GLO the discretion to withhold the information from the present requestor, and the Act requires the information be released.

In summary, we find that the request in this case constitutes a request under the Act, and because the GLO has not demonstrated that the information at issue is confidential or is otherwise excepted from required disclosure to the public, the GLO does not have the discretion, pursuant to the doctrine of intergovernmental transfer, to withhold the information from the city. Moreover, we are not persuaded by the GLO's additional arguments against

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<sup>3</sup>Discretionary exceptions are intended to protect only the interests of the governmental body, as distinct from exceptions which are intended to protect information deemed confidential by law or the interests of third parties. See, e.g., Open Records Decision Nos. 592 at 8 (1991) (governmental body may waive section 552.104, information relating to competition or bidding); 549 at 6 (1990) (governmental body may waive informer's privilege); 522 at 4 (1989) (discretionary exceptions in general).

disclosure that predict the regrettable adverse impact on the Permanent School Fund, and that employ various rules of statutory construction. The effect on the Permanent School Fund is a legislative concern. Furthermore, the plain language of the statute is unambiguous. We cannot resort to the rules of construction you cite when the language of the statute is plain and unambiguous. We thus conclude that the Act requires the GLO to release the requested information.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

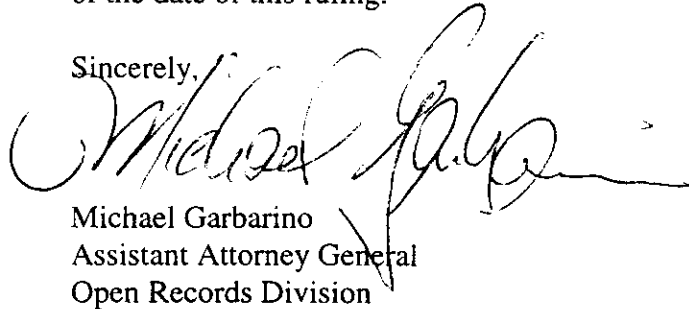
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or

complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Garbarino", is written over the typed name and title.

Michael Garbarino  
Assistant Attorney General  
Open Records Division

MG/seg

Ref: ID# 145969

Encl. Submitted documents

cc: The Honorable Carlos Garza  
Mayor  
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P.O. Box 2608  
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(w/o enclosures)

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